

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

RICKY FABELA

* **CIVIL ACTION NO. 08-0103**

VERSUS

* **JUDGE JAMES**

**MICHAEL J. ASTRUE,
COMMISSIONER, SOCIAL
SECURITY ADMINISTRATION**

* **MAGISTRATE JUDGE HAYES**

REPORT AND RECOMMENDATION

Pursuant to the April 10, 2008, Scheduling Order in this matter, plaintiff was required to file a memorandum within 60 days after service of the administrative transcript. (*See*, April 10, 2008, Scheduling Order).¹ Plaintiff failed to so comply; thus on July 16, 2008, the undersigned notified plaintiff that the court would dismiss this matter with prejudice under Rule 41(b) unless within the next fifteen days plaintiff filed his brief, or evidence of good cause for his failure to comply with the court order. (*See*, July 16, 2008, Notice of Intent to Dismiss). To date, plaintiff has neither filed his memorandum nor otherwise responded to the court's notice.

LAW AND ANALYSIS

Federal Rules of Civil Procedure Rule 41(b) permits dismissal of claims "[f]or failure of the plaintiff to prosecute or to comply with ... any order of court..." The district court also has the inherent authority to dismiss an action *sua sponte*, without motion by a defendant. *Link v. Wabash R.R.Co.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 1388-89 (1962). "The power to invoke this sanction is necessary in order to prevent undue delays in the disposition of pending cases and

¹ The Commissioner filed the administrative transcript in the court record on April 7, 2008.

to avoid congestion in the calendars of the [d]istrict [c]ourts.” *McCullough v. Lynaugh*, 835 F.2d 1126, 1127 (5th Cir.1988).

In light of plaintiff’s repeated failure to comply with, or respond to court orders,

IT IS RECOMMENDED that plaintiff’s complaint be **DISMISSED WITH PREJUDICE** in accordance with the provisions of FRCP Rule 41(b).

Under the provisions of 28 U.S.C. §636(b)(1)(C) and FRCP Rule 72(b), the parties have **ten (10) business days** from service of this Report and Recommendation to file specific, written objections with the Clerk of Court. A party may respond to another party’s objections within **ten (10) business days** after being served with a copy thereof. A courtesy copy of any objection or response or request for extension of time shall be furnished to the District Judge at the time of filing. Timely objections will be considered by the District Judge before he makes a final ruling.

A PARTY’S FAILURE TO FILE WRITTEN OBJECTIONS TO THE PROPOSED FINDINGS, CONCLUSIONS AND RECOMMENDATIONS CONTAINED IN THIS REPORT WITHIN TEN (10) BUSINESS DAYS FROM THE DATE OF ITS SERVICE SHALL BAR AN AGGRIEVED PARTY, EXCEPT ON GROUNDS OF PLAIN ERROR, FROM ATTACKING ON APPEAL THE UNOBJECTED-TO PROPOSED FACTUAL FINDINGS AND LEGAL CONCLUSIONS ACCEPTED BY THE DISTRICT JUDGE.

THUS DONE AND SIGNED in Chambers at Monroe, Louisiana, this 22nd day of August, 2008.



KAREN L. HAYES
U. S. MAGISTRATE JUDGE